

Exhibit E

02-4344

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FILED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK RODRIGUEZ,

Defendant.

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

No. 01 CR 567-2

Chicago, Illinois
December 17, 2002
9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - Sentencing
BEFORE THE HONORABLE JAMES F. HOLDERMAN

APPEARANCES:

For the Plaintiff:

HON. PATRICK J. FITZGERALD
United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-6117

BY: MR. CHRISTOPHER D. NIEWOEHNER

For the Defendant:

LAW OFFICES OF RAYMOND L. PRUSAK
BY: MR. RAYMOND L. PRUSAK
1021 West Adams Street, Suite 102
Chicago, Illinois 60607
(312) 226-0640

U.S. Probation:

Ms. Jennifer Cox

Also Present:

FBI Agents Frank DiPodesta and
Frank Sodetz

U.S.C.A.—7th Circuit

FILED

SP APR 3 2003

GINO J. AGNELLO
CLERK

DOC. # _____ COLLEEN M. CONWAY, CSR, CRR
219 South Dearborn Street
Room 2144-A
Chicago, Illinois 60604
(312) 435-5594

Clerk's Copy

Exhibit E

Colleen M. Conway, Official Court Reporter

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U.S. DISTRICT COURT
CLERK

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Amended Certificate of Service

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Holderman

I, Lisa M. Noller, an attorney, certify that I caused a copy of the Reply of the United States On Sentencing Pursuant to Limited Remand by the Court of Appeals to be served on Hope Lefebber, 620 Chestnut Street, Philadelphia, PA, 19106, by U.S. Mail, on this 15th day of July, 2005, and on Andrew J. McGowan, Staff Attorney, 401 Main Street, Suite 1500, Peoria, IL, 61602, by placing a copy of the document in the U.S. Mail, on this 15th day of July, 2005.



Lisa M. Noller

JUDGE'S COPY

JUL 15 2005

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

1 (Proceedings in open court.)

2 THE CLERK: 01 CR 567-2, United States versus
3 Rodriguez.

4 MR. NIEWOEHNER: Good morning, Your Honor.
5 Chris Niewoehner on behalf of the government.

6 THE COURT: Good morning.

7 MR. PRUSAK: Good morning, Your Honor.

8 For the record, Raymond Prusak appearing on behalf of
9 Frank Rodriguez.

10 MS. COX: Good morning, Your Honor.

11 Jennifer Cox on behalf of Probation representing Jodi
12 Halleran, the author of the presentence report.

13 THE COURT: Yes. Good morning.

14 And good morning, Mr. Rodriguez.

15 THE DEFENDANT: Good morning, Your Honor.

16 THE COURT: All right. Mr. Rodriguez, have you had a
17 chance to review the Presentence Investigation Report?

18 THE DEFENDANT: No.

19 THE COURT: Well, all right. When can counsel meet
20 with Mr. Rodriguez to go over the Presentence Investigation
21 Report?

22 MR. PRUSAK: Judge, I thought he had, had done that
23 with his previous lawyer several months ago.

24 THE COURT: You didn't go through it with him again?

25 MR. PRUSAK: I -- well --

1 THE COURT: Okay.

2 MR. PRUSAK: -- a couple of times we went over it,
3 Your Honor.

4 THE COURT: Okay.

5 MR. PRUSAK: The main points, not the entire document
6 itself.

7 THE COURT: Okay. Well, why don't you take the time
8 now, and we'll resume again when you're ready.

9 MR. PRUSAK: Thanks. Should only be a few minutes,
10 Judge.

11 THE COURT: How many minutes do you think it will be?

12 MR. PRUSAK: Five or ten, Judge. I mean, we've
13 covered it before and -- you know, the main points, but --

14 THE COURT: Mr. Rodriguez, you have looked at it
15 before, but you haven't gone over it with this lawyer?

16 THE DEFENDANT: No, I haven't.

17 THE COURT: You haven't?

18 THE DEFENDANT: I haven't gotten it from my previous
19 lawyer. He hasn't even showed me anything.

20 THE COURT: He hasn't shown it to you? Okay. All
21 right. Well, let me see if we can make some adjustments,
22 then.

23 Okay. Well, when do you think you folks would be
24 available, then, to proceed with the sentencing?

25 MR. PRUSAK: Your Honor, I'm scheduled to leave town

1 tomorrow afternoon or tomorrow evening for a two-week
2 vacation.

3 THE COURT: Well, we certainly want to accomplish it
4 before your two-week vacation.

5 MR. NIEWOEHNER: I'm available this afternoon, Your
6 Honor, if that permits sufficient time.

7 THE COURT: All right. Well, why don't we say 1:30
8 this afternoon, then.

9 Mr. Prusak, are you available?

10 MR. PRUSAK: Yes, Your Honor.

11 THE COURT: All right. This will give you time
12 between now and then to go through the presentence report.

13 Mr. Rodriguez, you keep signaling to someone back
14 there, I guess your father in the back of the courtroom.

15 Is there something that you wanted to communicate to
16 him?

17 THE DEFENDANT: I thought I was going to have another
18 attorney to argue my sentencing.

19 THE COURT: You thought you were going to have
20 another attorney arguing your sentencing?

21 THE DEFENDANT: Yeah.

22 THE COURT: What other attorney were you going to
23 have arguing your sentencing?

24 THE DEFENDANT: Tom Clancy.

25 THE COURT: You were going to have Tom Clancy arguing

1 your sentencing?

2 THE DEFENDANT: That's what I was told to me. I
3 mean --

4 THE COURT: Did you hire Tom Clancy?

5 THE DEFENDANT: Well, I don't know. That's -- you
6 know, I spoke to my father. I mean, I -- I mean, he has
7 documents to my case, so, I mean, obviously I figured he's my
8 attorney. I mean --

9 THE COURT: Who's that?

10 THE DEFENDANT: Tom Clancy. I visited with him, I
11 spoke to him, so -- he has my documents pertaining to my case,
12 so I don't know -- I figured he's my attorney. That's what he
13 told me. He would be here today to argue my sentencing,
14 that's what I thought, but --

15 THE COURT: Okay. Well, your sentencing was set for
16 9:30. Did you tell him that when you spoke with him?

17 THE DEFENDANT: That's what -- I don't know. My
18 father, he's -- that's what I'm trying to figure out. My
19 father's in the courtroom. I'm trying --

20 THE COURT: No, I'm asking you, sir, if you told him
21 9:30.

22 THE DEFENDANT: Yes, yes, Your Honor. He knows, he
23 knows.

24 THE COURT: Okay.

25 THE DEFENDANT: That's why I'm trying to figure out

1 why he's not here.

2 THE COURT: All right. Well, perhaps you can
3 communicate with him and tell him that it's now set for 1:30.

4 Thank you.

5 MR. NIEWOEHNER: Thank you, Your Honor.

6 THE COURT: All right. We will stand in recess until
7 11:00 o'clock when we call the next case.

8 (Recess from 9:45 a.m. until 1:30 p.m.)

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UNITED STATES OF AMERICA,)
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Plaintiff,)
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1 (Proceedings in open court.)

2 THE CLERK: 01 CR 567, United States versus
3 Rodriguez.

4 MR. NIEWOEHNER: Good afternoon, Your Honor.
5 Chris Niewoehner on behalf of the government.

6 THE COURT: Good afternoon.

7 MR. PRUSAK: Good afternoon, Your Honor.

8 For the record, my name is Raymond Prusak appearing
9 on behalf of Frank Rodriguez.

10 THE COURT: Good afternoon.

11 MS. COX: Good afternoon, Your Honor.

12 Jennifer Cox from Probation standing in for the
13 author of the report, Jodi Halleran.

14 THE COURT: Yes. Good afternoon.

15 Good afternoon, Mr. Rodriguez.

16 THE DEFENDANT: Good afternoon, Your Honor.

17 THE COURT: Mr. Rodriguez, have you had enough time
18 to review the Presentence Investigation Report?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. Are there any changes or
21 modifications that need to be made in the factual statements
22 set forth in the report?

23 MR. PRUSAK: He hasn't --

24 THE COURT: Do you see any -- in your review, Mr.
25 Rodriguez, do you see any need for change or modification in

1 the factual statements in the report?

2 THE DEFENDANT: No.

3 THE COURT: No? All right. Mr. Prusak, did you see
4 anything on behalf of your client that should be modified or
5 changed from a factual standpoint?

6 MR. PRUSAK: No, Your Honor. I filed a motion
7 objecting to the report, and I laid that out; but other than
8 that, no.

9 THE COURT: All right. I understand the motion that
10 you filed, but the motion that you filed really is the
11 application of the law to the facts. I didn't see any real
12 argument with the facts.

13 MR. PRUSAK: No, Your Honor. There's no argument
14 with the facts at all.

15 THE COURT: The Probation Department has prepared an
16 excellent report, and I appreciate that.

17 With regard to the motion that's been filed, the
18 objections are to the guideline calculations. And first there
19 is the -- and the government has filed a response. The first
20 is the role in the offense.

21 Is there anything that either counsel desires to say
22 with regard to the role-in-the-offense adjustment?

23 MR. PRUSAK: I do, Your Honor.

24 THE COURT: All right.

25 MR. PRUSAK: If I may address the Court?

1 THE COURT: You may.

2 MR. PRUSAK: On page 8 of the Presentence
3 Investigation Report --

4 THE COURT: Yes.

5 MR. PRUSAK: -- adjustment for role in the offense, I
6 think this sentence is very important in your determining
7 whether Mr. Rodriguez should get some adjustment downward or
8 not.

9 It states on line 252 that: "Evidence does not
10 suggest that Defendant Rodriguez could be considered an
11 organizer, leader, manager, or supervisor in the instant
12 case."

13 THE COURT: Yes.

14 MR. PRUSAK: "He was, however, an active participant
15 in the offense, and, therefore, his actions were not those of
16 minimal or minor participant in the concerted activity," and
17 then they go on to say: "Therefore, no adjustment is
18 applicable."

19 Your Honor, we disagree with the last part of the two
20 sentences I just read. I think it's, you know, the
21 government's contention as well as anybody who looks at this
22 case that Mr. Rodriguez was not an organizer, leader, manager,
23 or supervisor. It's our contention that the -- his
24 involvement was not essential in this matter for the
25 transaction to actually take place.

1 Your Honor is familiar with the facts, but briefly
2 what happened here was Brittany Nathan, a former girlfriend of
3 Mr. Rodriguez, had approached him to -- because the
4 confidential informant had approached her. Why the
5 confidential informant approached her, I have no idea. But
6 she went to her old boyfriend and asked him to do her a favor,
7 and for whatever reason, Mr. Rodriguez agreed to this. I'm
8 sure he regrets it now.

9 But it really wasn't a pecuniary interest that he was
10 looking to promote for himself. He was not -- if any monetary
11 amount was to be gotten by Mr. Rodriguez, I think the evidence
12 would show that it's only a few hundred dollars at most. What
13 probably happened here is Mr. Rodriguez was trying to do his
14 old girlfriend a favor.

15 Now, it's our contention again that had he given her
16 a phone number of the people that he eventually hooked up with
17 with the confidential informant, his involvement would have
18 been completely non-essential to this transaction; whereas,
19 Brittany Nathan, who was not charged for whatever reason, her
20 involvement was essential for this transaction to take place
21 because she's the one that brought the parties, namely, Mr.
22 Rodriguez and the confidential informant, together.

23 I think I need to speak about Mr. Rodriguez's mental
24 capacities at this time, Your Honor, and I --

25 THE COURT: All right. Well, let me just stick with

1 the role adjustment --

2 MR. PRUSAK: Yes, Judge.

3 THE COURT: -- argument first, and I'll hear from the
4 government on that point.

5 MR. NIEWOEHNER: Your Honor, the government's laid
6 out the factual version in its filing. I know you're familiar
7 with the case.

8 THE COURT: Yes.

9 MR. NIEWOEHNER: I think Mr. Rodriguez played an
10 integral role as a broker here. He was the only person who
11 knew both Brittany Nathan -- well, in fact, Brittany Nathan,
12 there's no evidence that she knew Pedro Castillo. Mr.
13 Rodriguez was the contact to Pedro Castillo who became the
14 source for the deal. Without him, there is no deal.

15 Mr. Rodriguez played roles in addition to that in
16 terms of providing samples, negotiating, and providing
17 security at the deal itself that take him beyond even a
18 mere -- just a broker. He's a broker plus. Therefore, I
19 think while we're not arguing that he should get an
20 enhancement for this, I don't think a minor role is
21 appropriate here.

22 THE COURT: All right. Anything further from the
23 defense on the --

24 MR. PRUSAK: Yes, Your Honor.

25 THE COURT: -- request for an adjustment for a minor

1 role?

2 MR. PRUSAK: Okay. We don't think he could be
3 considered as a middleman or a courier. He certainly knew
4 where the narcotics were, who had them and how to get them,
5 Your Honor, but they were not his narcotics, he did not
6 deliver them. He made minimal compensation. And after one
7 transaction, his involvement was complete. He didn't take
8 part in any other transactions that occurred after that.

9 And again, it's our contention that the commission of
10 this offense would have been completed without his
11 involvement. He was not an essential party other than the
12 initial introductions to this. He was kind of like a
13 hanger-on.

14 And the reason I wanted to bring up his mental state
15 at this point, Judge, was because it's part of his involvement
16 in this case.

17 He's a weak person as far as his mental capacities
18 are concerned. And you have Dr. Gutzmann's report which I
19 attached to my motion, Your Honor, and that mainly goes to the
20 obstruction of justice part of this sentencing hearing, but I
21 think you should take it into account when you look at his
22 involvement. He was trying to impress an old girlfriend,
23 Judge.

24 THE COURT: Attached, at least my copy of the report,
25 was only a part of Dr. Gutzmann's --

1 MR. PRUSAK: I'm sorry, Judge.

2 THE COURT: -- materials, pages 3 and 4.

3 MR. PRUSAK: Your Honor, I had --

4 THE COURT: I mean, I know what the whole report
5 says --

6 MR. PRUSAK: Right.

7 THE COURT: -- because I received it.

8 MR. PRUSAK: Right. Okay.

9 THE COURT: You said you attached the report --

10 MR. PRUSAK: Yeah, I --

11 THE COURT: -- to your motion, but it's only been a
12 part --

13 MR. PRUSAK: -- thought I did it in my copy.

14 THE COURT: -- of what's been attached.

15 MR. PRUSAK: Well --

16 THE COURT: But I've reviewed the entire report, and
17 you have attached pertinent portions of it.

18 MR. PRUSAK: Yes, Your Honor. But -- and I think you
19 have to be aware of his mental capacity when you consider his
20 involvement when we're asking for a downward reduction,
21 because it wasn't like he was going to make a profit out of
22 this, Your Honor, it wasn't like he was doing it for some
23 future business. He was doing it to impress an old
24 girlfriend, maybe in an attempt to win her back or whatever.

25 He is a boy in a man's world, Your Honor. He was a

1 bid player that unfortunately because of how he reacted to his
2 girlfriend's request, he tried to help her out and he got
3 himself in this situation. We're asking for you to look at it
4 in that light, that it's not like he's a drug dealer who's
5 preying on the souls of the addicts and trying to make a
6 profit, living in a big house, driving a big car, having money
7 to burn. He lives a very frugal life. He doesn't make --
8 didn't make much money. He went from job to job, probably
9 because he couldn't keep a job because of his mental
10 incapacity, his problems with ADHD, and the trauma he
11 suffered.

12 So, Judge, Your Honor, we're asking that he get the
13 downward adjustment for his minimal role in this offense.

14 THE COURT: All right. Because Mr. Rodriguez
15 introduced and linked the confidential informant with the drug
16 source, Mr. Castillo, and furthered the transaction beyond
17 that by providing samples which, of course, were provided to
18 Mr. Rodriguez by Mr. Castillo, his involvement was more than
19 that of a mere courier, more than that which would have
20 resulted from his merely introducing the confidential
21 informant with the drug source. And so because of that, there
22 should be no adjustment.

23 The probation report I believe is accurate in its
24 suggestion that no adjustment is appropriate. Mr. Rodriguez
25 did not play a minor role in this offense, and, consequently,

1 I believe no adjustment is appropriate.

2 MR. PRUSAK: Thank you, Judge.

3 THE COURT: No upward adjustment, of course, and no
4 downward adjustment.

5 All right. Moving on, then, to the next objection
6 which is to address specifically the emotional mental state of
7 Mr. Rodriguez. And we do have the report, and I have reviewed
8 the full report from Dr. Gutzmann.

9 You may proceed.

10 MR. PRUSAK: Thank you, Your Honor.

11 The diagnosis that she gave was attention deficit
12 hyperactivity disorder with parentheses "provisional,"
13 adjustment disorder with mixed emotional features. That's
14 axis I. Axis II is personality disorder NOS with narcissistic
15 features. Axis III, history of blunt head trauma.

16 The government is contending because Mr. Rodriguez
17 wrote a letter to Brittany Nathan, his former girlfriend,
18 threatening her that he is guilty of obstruction of justice
19 and, therefore, should be given no consideration for pleading
20 guilty.

21 Your Honor, I think the most important part of Dr.
22 Gutzmann's whole evaluation of Mr. Rodriguez is her
23 formulation, and that's on the last page of her report. And
24 if I could just pick out what I think is the most appropriate
25 at this point in my argument: "Under the current highly

1 stressful situation, he has very limited abilities to manage
2 his thoughts and emotions and must resort to fairly low-level
3 defense mechanisms. Some of these include refusing to
4 acknowledge painful aspects of reality, devaluation and
5 blaming of others, and acting out on the basis of his feelings
6 rather than reflecting on them and seeking support. While he
7 has the requisite mental capacity to make a competent decision
8 to plead guilty, he lacks the psychological capacity to cope
9 with the consequences of that decision."

10 (Court conferring with his clerk.)

11 MR. PRUSAK: What Dr. Gutzmann is speaking to, I
12 believe, Your Honor, is that although Mr. Rodriguez could
13 have -- was competent to plead guilty, he cannot deal with the
14 situation he finds himself in. He lacks the specific
15 mechanisms that normal people as -- you know, who placed in a
16 similar situation would be able to cope.

17 Judge, the letter that he wrote was not sent directly
18 to Ms. Nathan. It was sent to Ms. Nathan's mother, I believe.
19 It contained threats which could never be brought forward in a
20 realistic manner. It was all fantasy, Your Honor. Ms. Nathan
21 never, I believe, saw the letter until her mother made her
22 aware of it. And I believe she even wrote to the Court
23 stating that Frank has problems and that she never took the
24 threat seriously.

25 Judge, what we're talking about is an adjustment that

1 would bring Mr. Rodriguez up to approximately 14 to 21 years,
2 if my calculations are correct, from an offense that has a
3 base of 10 years. So we're talking an additional four to
4 seven years of incarceration because he wrote a stupid letter,
5 a letter that, even though it's threatening in tone, could not
6 possibly have been carried out. That letter was the act of a
7 desperate man who suffers from psychological trauma. He had
8 blunt trauma when he was younger. It was repeated later.
9 There's physical reasons why he has a psychological
10 manifestation that can -- results in him not coping with
11 reality.

12 He's had a tremendously tough childhood. He was
13 removed from his parents' care by DCFS and placed in foster
14 homes. He's been on all sorts of medication when he was a
15 child.

16 He cannot cope with the situation he finds himself
17 in, and I think that the last few months that Your Honor and
18 the personnel in the court have witnessed Mr. Rodriguez take
19 part in in trying to vacate his plea is just evidence of the
20 fact that he cannot accept the reality he finds himself in
21 because he cannot cope. He doesn't have the proper mental
22 capacity to cope.

23 Your Honor, it was an act of a stupid, desperate man,
24 but you've got to look at that letter in the context in which
25 it was written and the fact that it could never have been

1 possible to carry out.

2 Mr. Rodriguez's own brother whom that letter refers
3 to has actually tried and has cooperated with the government
4 in aspects that go beyond this case and that are not related
5 to this case, but he tried to help his brother out by
6 cooperating with the United States Government. That was one
7 of the brothers that Mr. Rodriguez referred to that would, you
8 know, cause harm to Ms. Nathan.

9 Ms. Nathan never took the threat seriously, and I
10 know the government does. Whether Your Honor thinks that
11 that's enough to give him an obstruction of justice in the
12 sentencing is something that I don't think is relevant to the
13 whole total picture of this case, Judge. It's an aberration
14 that occurred because he does not have the mental capacity to
15 deal with his problems.

16 THE COURT: Well, Dr. Gutzmann said: "He has the
17 requisite mental capacity to make a competent decision" --

18 MR. PRUSAK: Well --

19 THE COURT: -- "to plead guilty," this is the last
20 lines of her statement --

21 MR. PRUSAK: Correct.

22 THE COURT: -- comma, "he lacks the psychological
23 capacity to cope with the consequences of that decision." He
24 doesn't have a mental capacity problem. He has an emotional
25 problem, a psychological problem dealing with the consequences

1 of the decision.

2 He's a competent person, and he's shown it even this
3 morning when he explained to me that he had not had a
4 sufficient opportunity to review the Presentence Investigation
5 Report.

6 There's no question that he has the mental capacity
7 to make a competent decision in any decision in his life. His
8 difficulty is the psychological capacity, and that's exactly
9 what Dr. Gutzmann found.

10 So you're mixing the words. He's a competent person,
11 but he has difficulty coping with the decision.

12 MR. PRUSAK: Well --

13 THE COURT: He had difficulty coping with the
14 decision to plead guilty. But beyond the Brittany Nathan
15 situation, he testified falsely at the hearing to withdraw his
16 guilty plea.

17 Now, you can roll your eyes at it, Mr. Prusak.

18 MR. PRUSAK: No, I'm not rolling my eyes at the
19 Court.

20 THE COURT: Well, you did.

21 MR. PRUSAK: Well, I --

22 THE COURT: That's what he did. So --

23 MR. PRUSAK: He did.

24 THE COURT: -- it seems to me the Brittany Nathan
25 matter is somewhat immaterial at this point.

1 MR. PRUSAK: Well, Judge, if I can respond?

2 THE COURT: To what?

3 MR. PRUSAK: To your comments just now, Your Honor.

4 THE COURT: Yes, because I put this all in the
5 decision that I made on December 5th, yes.

6 MR. PRUSAK: I'm aware of that.

7 THE COURT: Okay.

8 MR. PRUSAK: And I respectfully disagree with that
9 decision, Your Honor. But I don't think there's too much of a
10 difference between mental capacity and psychological and
11 emotional problems.

12 THE COURT: Well, Dr. Gutzmann found there's a
13 difference.

14 MR. PRUSAK: Well --

15 THE COURT: Because she made the distinction and she
16 made the distinction for my benefit.

17 MR. PRUSAK: Yes.

18 THE COURT: So that I could understand that there is
19 a distinction. You're trying to blur them back together
20 again.

21 MR. PRUSAK: No, I disagree again, respectfully,
22 Judge.

23 THE COURT: Isn't that what you're trying to do?

24 MR. PRUSAK: No, Your Honor. I --

25 THE COURT: Okay. Well, Dr. Gutzmann was your

1 hand-picked psychiatrist.

2 MR. PRUSAK: She was.

3 THE COURT: You've used her in the past.

4 MR. PRUSAK: Yes.

5 THE COURT: She has testified for you in the past.

6 She made the determination that she made with regard
7 to Mr. Rodriguez, and it seems to me that we ought to apply,
8 since she's the only psychiatrist that we consulted on this,
9 we ought to apply her determination.

10 I find nothing to dispute her determination, and you
11 don't either, right?

12 MR. PRUSAK: Well, I do. No, no.

13 THE COURT: You disagree --

14 MR. PRUSAK: No, no, I don't --

15 THE COURT: -- with her determination?

16 MR. PRUSAK: I disagree with your interpretation of
17 her --

18 THE COURT: Well, I just read her words exactly as
19 she wrote them right above her signature on her report.

20 MR. PRUSAK: If I can respond just briefly, Judge?

21 THE COURT: All right.

22 MR. PRUSAK: There is a distinction between legal
23 competence and being competent. There is -- it takes a great
24 deal more to be insane legally or incompetent legally in a
25 court of law than it does to be a person who has psychological

1 and/or mental problems.

2 There's no question that Dr. Gutzmann found Mr.
3 Rodriguez to be competent to plead guilty in a court of law.

4 THE COURT: Because that was the question that was
5 posed to her.

6 MR. PRUSAK: Yes, Your Honor. But you cannot ignore
7 the fact that she found a slue of problems that this man
8 suffers from. Whether they're labeled mental problems or
9 psychological or emotional problems, they still are problems
10 that are dealt with by a physician and should be treated with
11 medication and/or other therapy.

12 He has a medical problem, whether it's a mental
13 problem or a psychological problem, Your Honor, and because of
14 those emotional and/or psychological or mental problems, which
15 are not enough to find him incompetent or insane, are enough
16 to explain somehow why he cannot accept responsibilities for
17 his actions and why he put us all through the charades we went
18 through of the past month.

19 Judge, he's a messed-up kid, and the fact that he
20 showed us he was messed up by not accepting his responsibility
21 shouldn't be a reason why he should get five or seven or more
22 years in the penitentiary, Your Honor. It's not going to
23 serve the government any better housing Mr. Rodriguez for
24 additional time.

25 He's looking already at ten years, Your Honor. To

1 get more than that, it would be just to -- it would be piling
2 it on, I think, in my view, Your Honor. I mean, ten years is
3 a significant amount of time for this transaction. To give
4 him more time in the penitentiary because he has those
5 emotional problems just wouldn't be right, Your Honor. It
6 wouldn't be fair. It wouldn't be -- in my opinion, it
7 wouldn't be just. He's already getting double digits.

8 He does have a problem, and I think Dr. Gutzmann
9 acknowledged that. And it's not just a make-believe problem.
10 It's a problem that can be traced to his childhood, can be
11 traced to the trauma that he received on his head. It could
12 be traced to the fact that he used Ritalin and abused it
13 himself. It could be traced to a number of things that result
14 in a person who's not balanced.

15 He's kind of like the village idiot, Judge, and if
16 the village idiot's going on in town square and yelling
17 obscenities at people and threatening people, are you going to
18 take the village idiot seriously? No. We realize we have
19 people in our society that are like that, and there are ways
20 to deal with him other than giving him more time in the
21 penitentiary.

22 Whatever Your Honor decides to do as far as the years
23 Mr. Rodriguez gets, I would hope that there would be a
24 recommendation that he receive some sort of psychological
25 therapy in dealing with these problems and to see that he --

1 if he needs to be medicated, receives the proper medication.

2 That's all, Judge.

3 MS. REPORTER: Judge, I need to change my paper.

4 (Pause.)

5 THE COURT: All right. I will hear from the
6 government.

7 MR. NIEWOEHNER: Your Honor, as I think you already
8 pointed out, this is somewhat a moot discussion given Your
9 Honor's finding about his perjured testimony in the November
10 hearing, which I agree it would also provide grounds for
11 finding an obstruction of justice.

12 In terms of this letter, it was sent out
13 approximately three weeks before the psychological report
14 shows that he was found competent. Nothing in there suggests
15 that he didn't know what he was doing when he wrote the
16 letter. And the context of the letter does suggest it is
17 something that should be considered given that this is a woman
18 that he had physically acted out towards to the point where
19 she felt she needed to get an order of protection against him.
20 And if we read the context of the letter, I think that speaks
21 for itself.

22 Accordingly, I think the probation report should be
23 upheld and neither acceptance -- should he receive acceptance
24 and he should get obstruction of justice.

25 THE COURT: Anything further from defense counsel?